IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5150 OF 2004

Securities & Exchange Board
of India ... Applicant

versus

State of Maharashtra & ors. ... Respondents

...

Mr.S. Srivastava i/by M/s. D.H. Law Associates, for the Applicant.

Mr.K.V. Saste, A.P.P., for the Respondent No.1.

...

CORAM : A.M.KHANWILKAR,J.

5th May 2005

P.C.:

. Inspite of service, none appears for the private Respondents. Mr. Saste, A.P.P., appears for the Respondent No.1 State. Notice issued by this Court clearly indicated that the matter will be finally disposed of on the returnable date, as can be discerned from order dated 10th February

2005. As mentioned earlier, inspite of notice, none appears for the private Respondents.

. The short question involved in the present application is whether the order passed by the Magistrate dismissing the complaint filed by the Applicant on the ground of absence of the complainant can be sustained. The order which is impugned in this application, dated 29th May 2004, merely records that, "Complainant absent, accused and his Advocate present. Case is dismissed". The case has been dismissed not because the Applicant has consistently remained absent before the trial Court. From the order as passed, at best, it can be assumed that it has been dismissed because on the concerned date, i.e., 29th May 2004, as none appeared for the complainant, the same came to be dismissed. Sofar as non-appearance on 29th May 2004 is concerned, the application filed before this Court clearly avers the circumstances in which no appearance could be made before the trial Court before the impugned order came to be passed. The circumstances as stated in the application have remained uncontroverted. As that is a sufficient

cause, in my opinion, it is in the interest of justice to set aside the order impugned in this application and restore the complaint to the file of the trial Court to its original number to be proceded against in accordance with law.

. Application succeeds on the above terms.

(A.M.KHANWILKAR,J.)